

C would therefore be related and allocable to both foreign source and domestic source income and would be subject to apportionment.

(B) *Apportionment.* The deduction of \$14,000x for income taxes of states B and C is apportioned in the same manner as in paragraph (g)(26) of this section (*Example 26*). As a result, \$5,250x of the \$14,000x of state B and state C income taxes is apportioned to foreign source foreign branch category income ($\$14,000x \times \$150,000x/\$400,000x$), and \$8,750x ($\$14,000x \times \$250,000x/\$400,000x$) of the \$14,000x of state B and state C income taxes is apportioned to U.S. source income.

(h) *Applicability date.* This section applies to taxable years that both begin after December 31, 2017, and end on or after December 4, 2018.

[T.D. 7456, 42 FR 1195, Jan. 6, 1977]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 1.861-8, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at www.govinfo.gov.

§ 1.861-8T Computation of taxable income from sources within the United States and from other sources and activities (temporary).

(a) *In general.* (1) [Reserved]

(2) *Allocation and apportionment of deductions in general.* If an affiliated group of corporations joins in filing a consolidated return under section 1501, the provisions of this section are to be applied separately to each member in that affiliated group for purposes of determining such member's taxable income, except to the extent that expenses, losses, and other deductions are allocated and apportioned as if all domestic members of an affiliated group were a single corporation under section 864(e) and the regulations thereunder. See § 1.861-9T through § 1.861-11T for rules regarding the affiliated group allocation and apportionment of interest expense, and § 1.861-14T for rules regarding the affiliated group allocation and apportionment of expenses other than interest.

(a)(3)-(b) [Reserved] For further guidance, see § 1.861-8(a)(3) through (b).

(c) *Apportionment of deductions—(1) Deductions definitely related to a class of gross income.* Where a deduction has

been allocated in accordance with paragraph (b) of this section to a class of gross income which is included in one statutory grouping and the residual grouping, the deduction must be apportioned between the statutory grouping and the residual grouping. Where a deduction has been allocated to a class of gross income which is included in more than one statutory grouping, such deduction must be apportioned among the statutory groupings and, where necessary, the residual grouping. Thus, in determining the separate limitations on the foreign tax credit imposed by section 904(d)(1) or by section 907, the income within a separate limitation category constitutes a statutory grouping of income and all other income not within that separate limitation category (whether domestic or within a different separate limitation category) constitutes the residual grouping. In this regard, the same method of apportionment must be used in apportioning a deduction to each separate limitation category. Also, see paragraph (f)(1)(iii) of this section with respect to the apportionment of deductions among the statutory groupings designated in section 904(d)(1). If the class of gross income to which a deduction has been allocated consists entirely of a single statutory grouping or the residual grouping, there is no need to apportion that deduction. If a deduction is not definitely related to any gross income, it must be apportioned ratably as provided in paragraph (c)(3) of this section. A deduction is apportioned by attributing the deduction to gross income (within the class to which the deduction has been allocated) which is in one or more statutory groupings and to gross income (within the class) which is in the residual grouping. Such attribution must be accomplished in a manner which reflects to a reasonably close extent the factual relationship between the deduction and the grouping of gross income. In apportioning deductions, it may be that for the taxable year there is no gross income in the statutory grouping or that deductions will exceed the amount of gross income in the statutory grouping. See paragraph (d)(1) of this section with respect to cases in which deductions exceed gross income.

Internal Revenue Service, Treasury

§ 1.861-8T

In determining the method of apportionment for a specific deduction, examples of bases and factors which should be considered include, but are not limited to—

- (i) Comparison of units sold,
- (ii) Comparison of the amount of gross sales or receipts,
- (iii) Comparison of costs of goods sold,
- (iv) Comparison of profit contribution,
- (v) Comparison of expenses incurred, assets used, salaries paid, space utilized, and time spent which are attributable to the activities or properties giving rise to the class of gross income, and
- (iv) Comparison of the amount of gross income.

Paragraph (e) (2) through (8) of this section provides the applicable rules for allocation and apportionment of deductions for interest, research and development expenses, and certain other deductions. The effects on tax liability of the apportionment of deductions and the burden of maintaining records not otherwise maintained and making computations not otherwise made shall be taken into consideration in determining whether a method of apportionment and its application are sufficiently precise. A method of apportionment described in this paragraph (c)(1) may not be used when it does not reflect, to a reasonably close extent, the factual relationship between the deduction and the groupings of income. Furthermore, certain methods of apportionment described in this paragraph (c)(1) may not be used in connection with any deduction for which another method is prescribed. The principles set forth above are applicable in apportioning both deductions definitely related to a class which constitutes less than all of the taxpayer's gross income and to deductions related to all of the taxpayer's gross income. If a deduction is not related to any class of gross income, it must be apportioned ratably as provided in paragraph (c)(3) of this section.

(2) *Apportionment based on assets.* For further guidance, see § 1.861-8(c)(2).

(3) [Reserved]

(d) *Excess of deductions and excluded and eliminated items of income.* (1) [Reserved]

(2) *Allocation and apportionment to exempt, excluded or eliminated income—(i) In general.* In the case of taxable years beginning after December 31, 1986, except to the extent otherwise permitted by § 1.861-13T, the following rules shall apply to take account of income that is exempt or excluded, or assets generating such income, with respect to allocation and apportionment of deductions.

(A) *Allocation of deductions.* In allocating deductions that are definitely related to one or more classes of gross income, exempt income (as defined in paragraph (d)(2)(ii) of this section) shall be taken into account.

(B) *Apportionment of deductions.* In apportioning deductions that are definitely related either to a class of gross income consisting of multiple groupings of income (whether statutory or residual) or to all gross income, exempt income and exempt assets (as defined in paragraph (d)(2)(ii) of this section) shall not be taken into account.

For purposes of apportioning deductions which are not taken into account under § 1.1502-13 in determining gain or loss from intercompany transactions, as defined in § 1.1502-13, income from such transactions shall be taken into account in the year such income is ultimately included in gross income.

(ii) *Exempt income and exempt asset defined—*

(A) *In general.* For further guidance, see § 1.861-8(d)(2)(ii)(A).

(B)(I) *Certain stock and dividends.* The term “exempt income” includes the portion of the dividends that are deductible under—

(i) Section 243(a) (1) or (2) (relating to the dividends received deduction),

(ii) Section 245(a) (relating to the dividends received deduction for dividends from certain foreign corporations).

(2) Thus, for purposes of apportioning deductions using a gross income method, gross income would not include a dividend to the extent that it gives rise to a dividend received deduction under either section 243(a)(1), section 243(a)(2), or section 245(a). In the case

of a life insurance company taxable under section 801, the amount of such stock that is treated as tax exempt shall not be reduced because a portion of the dividends received deduction is disallowed as attributable to the policyholder's share of such dividends. See § 1.861-14T(h) for a special rule concerning the allocation of reserve expenses of a life insurance company. In addition, for purposes of apportioning deductions using an asset method, assets would not include that portion of stock equal to the portion of dividends paid thereon that would be deductible under either section 243(a)(1), section 243(a)(2), or section 245(a). In the case of stock which generates, has generated, or can reasonably be expected to generate qualifying dividends deductible under section 243(a)(3), such stock shall not constitute a tax exempt asset. Such stock and the dividends thereon will, however, be eliminated from consideration in the apportionment of interest expense under the consolidation rule set forth in § 1.861-10T(c), and in the apportionment of other expenses under the consolidation rules set forth in § 1.861-14T.

(C) *Foreign-derived intangible income and inclusions under section 951A(a).* For further guidance, see § 1.861-8(d)(2)(ii)(C).

(iii) *Income that is not considered tax exempt.* The following items are not considered to be exempt, eliminated, or excluded income and, thus, may have expenses, losses, or other deductions allocated and apportioned to them:

(A) In the case of a foreign taxpayer (including a foreign sales corporation (FSC)) computing its effectively connected income, gross income (whether domestic or foreign source) which is not effectively connected to the conduct of a United States trade or business;

(B) In computing the combined taxable income of a DISC or FSC and its related supplier, the gross income of a DISC or a FSC; and

(C) For further guidance, see § 1.861-8(d)(2)(iii)(C) through (E).

(D)-(E) [Reserved]

(iv) *Value of stock attributable to previously taxed earnings and profits.* For further guidance, see § 1.861-8(d)(2)(iv).

(e) *Allocation and apportionment of certain deductions.* (1) [Reserved]. For further guidance, see § 1.861-8(e)(1).

(2) *Interest.* The rules concerning the allocation and apportionment of interest expense and certain interest equivalents are set forth in §§ 1.861-9T through § 1.861-13T.

(3) *Research and experimental expenditures.* For further guidance, see § 1.861-8(e)(3) through (15).

(4)-(15) [Reserved]

(f) *Miscellaneous matters.* For further guidance, see § 1.861-8(f) through (g).

(g) [Reserved]

(h) *Effective/applicability date.* (1) Paragraphs (f)(1)(vi)(E), (f)(1)(vi)(F), and (f)(1)(vi)(G) of this section apply to taxable years ending after April 9, 2008.

(2) Paragraph (e)(4), the last sentence of paragraph (f)(4)(i), and paragraph (g), *Examples 17, 18, and 30* of this section apply to taxable years beginning after July 31, 2009.

(3) Also, see paragraph (e)(12)(iv) of this section and 1.861-14(e)(6) for rules concerning the allocation and apportionment of deductions for charitable contributions.

[T.D. 8228, 53 FR 35474, Sept. 14, 1988]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 1.861-8T, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at www.gpo.gov.

§ 1.861-9 Allocation and apportionment of interest expense and rules for asset-based apportionment.

(a) *In general.* For further guidance, see § 1.861-9T(a) through (b).

(b) [Reserved]

(c) *Allowable deductions.* For further guidance, see § 1.861-9T(c) introductory text.

(1) *Disallowed deductions.* For further guidance, see § 1.861-9T(c)(1) through (4).

(2)-(4) [Reserved]

(5) *Section 163(j).* If a taxpayer is subject to section 163(j), the taxpayer's deduction for business interest expense is limited to the sum of the taxpayer's business interest income, 30 percent of the taxpayer's adjusted taxable income for the taxable year, and the taxpayer's floor plan financing interest expense. In the taxable year that any deduction